

Finally, I may state that in accordance with the practice followed in the old Legislative Council Honourable Members of the Assembly will be supplied with copies of the bound volumes of the proceedings of an entire session in addition to the daily parts supplied as and when they are brought out.

Ruling of the Speaker on the point of order raised during the last session about scope of debate in certain circumstances.

Mr. SPEAKER (Sri V. Venkatappa).—During the last session of the Assembly on the demand under the head "Land Revenue", Janab Mohamed Imam moved a cut motion as follows :

"That the demand under the head '1. Land Revenue' for Rs. 48,82,000 be reduced by Re. 1 (to raise a debate on the exchange of enclaved villages between the States of Mysore and Madras)".

The Honourable Leader of the House—the Chief Minister—raised an objection to the moving of this cut motion. He said :

"But a constitutional aspect has arisen and I venture to submit that this matter requires careful examination. Not only this matter but several other matters which have been concluded with the Government of India by this Government and on which the Government of India have issued an order are likely to come up for discussion on the floor of this House. In the first place, a decision has to be taken whether such orders of the Government could be debated upon on the floor of this House and if it is decided on any particular aspect that it could be discussed so far as it relates specifically to the action of the Mysore Government, then the scope of such debate has to be laid down."

On that occasion I observed that the point raised was an important one and that I would give a ruling on the general issue after hearing the views of the Honourable Members. On the cut motion itself I permitted debate.

Later, on the demand under the head "General Administration" the Honourable Member, Janab Mohamed Imam sought to move a cut motion in the following terms :

"That the demand under the head '12. General Administration' for Rs. 22,44,900 be reduced by Re. 1 (to raise a debate on the recommendation of the Mysore Government to the States Ministry regarding the termination of the services of Sri Puttaraj Urs)".

L. A.

The Leader of the House again raised a point of order and observed that the present cut motion, like the one on which a point of order was raised earlier, required a decision on the main constitutional aspect involved before its admissibility could be determined. He stated :

"Whenever the Government of India takes any particular decision or issues any particular order in the exercise of the power vested in them under the provisions of the Indian Constitution, that cannot be made the subject-matter of discussion in any State Legislature whatsoever, whether in Part A State or Part B State."

He proceeded to say :—

"There are some other actions taken by the Government of India or orders issued which are not in pursuance of any specific article under the Indian Constitution but which are on the basis of administrative exercise of authority; I refer to matters relating to food and certain other departments like that in regard to which the Government of India take decision and issue certain orders after consultation with the State Government concerned."

"I may straightaway admit that so far as such administrative action of the Government of India is concerned, it is not because of any specific inherent power vested in them by the Constitution. The recommendation or the advice or the suggestion given by the State Government in that behalf can legitimately be debated upon on the floor of this House."

After hearing Janab Mohamed Imam also on this point of order, I requested him not to move his cut motion for the reason that the retirement of Sri Puttaraj Urs which was raised in the cut motion was being enquired into by the Chief Justice of India and any discussion here would be embarrassing. I also stated that I would reserve my ruling on the general issue raised over the scope of discussion on such matters in this Assembly. On the penultimate day of the last session, I made a statement drawing the attention of the Members to the several points involved in the objection raised by the Chief Minister to the two cut motions and invited the reference of the Members to certain provisions of the Constitution which appeared to me to have a bearing on the subject. On the last day of the session, this point of order was debated at length by the Honourable Members and I am grateful to them for helping me with their valuable opinion.

During the discussion one view was expressed that as the point of order

was a general one and as the cut motions in respect of which it was raised had been disposed of, there was no need for a ruling at all and that the admissibility of each motion might be decided on its merits. At one stage I too felt that it may not be necessary to give a ruling on such a general issue. Such a ruling of a general character is not of much value because each case has to be judged on its own merits and on the peculiar circumstances or on the special facts in which it arises. A general ruling in such circumstances may normally cause embarrassment to the Chair on future occasions and may also be a source of difficulty to members who may want to table motions. But the issue raised is such an important one for our future deliberations that I have decided to state my own opinion. Upon the decision to be given on this point of order will depend to a large extent the scope of future debate in this House on a number of vital issues. It would even affect the powers of this House. I have therefore given very anxious consideration to the several matters relevant to a decision on this point of order. I may however say at the outset that in the ruling I am now about to give I have felt no doubts at all and I am quite clear in my mind that in the present set-up under the Constitution of India no other point of view is possible.

Though the new Constitution declaring India to be a Sovereign Democratic Republic partly came into effect on the 26th November 1949, it took effect in its entirety from the 26th January 1950. After the 26th January 1950 therefore, it is under this Constitution that we function, it is under this Constitution that this Legislature has been set up or rather continued and it is to the provisions of this Constitution that we must turn for an answer to the objection raised by the Leader of the House.

The Leader of the House during the debate referred to a distinction recognised by the Constitution between certain categories of cases, namely those where the consent of the State Government was necessary before action

could be taken by the Government of India, those where consultation with State Governments was required and thirdly, those where, though not obligatory, the Government of India did consult the State Government and obtain their opinion. He expressed the view that while a debate in the State Legislature on the act or omission of the State Ministry in the first two categories of cases would be in order, it would not be permissible in the third category. The proper forum in such a case he said, would be the Parliament and discussion in the State Legislature would be profitless, since no responsibility on the State Ministry could be fixed definitely and squarely. I think that we have to look for an answer to our question not in the division of functions into these three categories referred to above but elsewhere. We have to look at those provisions of the Constitution which have adopted for the first time in India the principle of responsible Government, provisions which have set up a cabinet responsible to the Legislature (article 164 (2)). Now, what does this principle of responsibility mean and what does it imply? Without going into any great detail on this constitutional question, I may at once say that it means, in effect, that for every act with which the Ministers are officially connected, for matters of administration for which they are responsible and of course for omissions in such spheres, they are responsible to the Legislature on whose vote and confidence they depend for their existence as Ministers. The crucial test therefore, generally speaking, is, whether in respect of the act or omission which is sought to be made the subject of debate or motion, any Minister is officially involved as Minister. If so, on this principle of responsibility, the debate or motion should be held to be admissible. Such being the constitutional position under our Constitution, as I conceive of it, it becomes immaterial whether the recommendation of Government, that is, the Ministry, was made in respect of a matter on which consent is necessary or consultation is required, or is made,

without any constitutional compulsion, at the request of the Government of India or is even offered *suo moto*. In all such cases, the recommendation is made by the Ministers as Ministers, that is, in virtue of the position they occupy as Ministers by the goodwill of the House. I think there cannot be and should not be any case in which a Minister acts or omits to act as Minister and yet can say that he is not or need not be answerable to the House. It has to be remembered that what is sought to be debated is not the ultimate action of the Government of India with which we of this House are not concerned but the prior act or omission of the State Government. The Legislature would be perfectly in order to debate or discuss this act or omission however made or omitted provided it is an act of omission which is made or omitted by the Ministers as Ministers.

The Leader of the House also argued that the executive power is coterminous with the sphere of the Legislative power. I am afraid it may not be a correct statement of the position. The Constitution has provided for two Governments and two legislatures in the governance of the country. There are the Government of India and the Parliament on the one hand and the State Government and the State Legislature on the other. In the legislative sphere the two bodies, Parliament and the State Legislature, both operate directly on the States, within the sphere of their allotted powers. The distribution of legislative powers therefore takes note of the existence of two Legislative bodies and provides accordingly. On the other hand, the extent of executive power has been provided for in separate articles, namely, articles 73 and 162. For instance, in respect of matters covered by the concurrent list, article 73 states that the executive power of the Union in such matters shall not extend to Part A or Part B States, unless expressly provided for in the Constitution or by any law made by Parliament. Further, State Governments and State authorities are permitted, by clause (2) of article 73, to continue to exercise

power which it was exercising before the commencement of the Constitution even in respect of matters with respect to which Parliament has power to make laws. Hon'ble Members will thus see how it is difficult to hold that the executive and legislative powers are co-extensive. However, as I said already, the principal question is not one of the extent of executive power but one of responsibility of the Ministers and whether any particular matter is one in respect of which the Ministry acts or fails to act in an official capacity.

Having said so much, I want to make it clear that this must be considered only as a general statement of the question. There are certain limitations imposed by the Constitution itself which we must honour. I may refer, only by way of illustration, to article 211 which precludes any discussion in respect of any Judge of the Supreme Court or of a High Court in the discharge of his duties. There may also be limitations imposed by the circumstances of each case. By way of example, I may instance a case where public interest or safety renders it undesirable to debate a question. Finally, there are rules of debate which may bar particular motions or subjects of debate. Each case will have to be decided on its facts and merits and it would be obviously impossible to lay down a general rule defining all the circumstances or conditions in which such questions can or cannot be raised. The Chair must be free to decide such cases as and when they arise for a decision in the future.

[At this stage 2-12 p.m. Janab J. Mohamed Imam and the members of his party entered the Hall].

Statement regarding provision of Seats for Officers in the Officers' Gallery.

Mr. SPEAKER (Sri V. Venkatappa)—Honourable Members will have noticed that an Officers' Gallery has been set up in the Hall. When a meeting of